

REMARKS

The Application has been carefully reviewed in light of the Office Action mailed April 1, 2003. Applicant has added new dependent Claims 38 and 39. Although Applicant believes all pending claims are allowable without amendment, to expedite issuance of a patent from the Application, Applicant has made clarifying amendments to independent Claims 1, 12, 19, and 28. None of these changes is considered necessary for patentability. Applicant respectfully requests reconsideration and full allowance of all pending claims.

In the Notice of References Cited that was attached to the Office Action mailed April 1, 2003, the Examiner cites only pages 13-5 through 13-33 of *Purchasing Handbook* by George W. Aljian ("Aljian"). However, in the Office Action, in addition to these pages of *Aljian*, the Examiner also refers to pages 3-30 through 3-32, 5-41 through 5-42, 14-28 through 14-35, and 19-52 through 19-54. Applicant notes that, despite their absence from the Notice of References Cited, the Examiner has also considered at least these additional pages of *Aljian*.

Applicant Respectfully Requests Prompt Resolution of Patentability

Applicant respectfully notes that the Application has been pending for almost five years and that the Examiner has issued six Office Actions—four before Applicant appealed and two after the Examiner reopened prosecution. In five of the Office Actions, the Examiner has come forward with and relied on new references (all of which were available to the Examiner before the first Office Action) to maintain the rejection of the claims. Applicant respectfully submits that the Examiner has had sufficient opportunity to fully consider the Application. Applicant respectfully requests prompt resolution of patentability based on the prior art of record.¹

¹ According to the M.P.E.P.:

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent official action with a view to finally

**Claims 1-37 are Allowable Over the Proposed
Aljian-Barber-Roden Combination**

The Examiner rejects Claims 1-37 under 35 U.S.C. § 103(a) as being unpatentable over *Aljian* in view of U.S. Patent No. 5,040,123 to Barber et al. ("*Barber*") and in further view of U.S. Patent No. 6,247,774 to Roden et al. ("*Roden*"). Even assuming for the sake of argument that *Aljian* could be properly combined with *Barber* and *Roden*, the proposed *Aljian-Barber-Roden* combination would still fail to disclose, teach, or suggest limitations recited in Applicant's independent claims.

Independent Claims 1 and 19

The Examiner acknowledges that *Aljian* fails to disclose, teach, or suggest, certain limitations recited in independent Claims 1 and 19. To make up for some of the acknowledged deficiencies of *Aljian*, the Examiner asserts that *Barber* discloses "communicating from the buyer computer to a seller computer an option contract for the supply of a product and executing the option contract." To makeup for other acknowledged deficiencies of *Aljian*, the Examiner asserts that *Roden* discloses "that the option contract including an option corresponding to the range of forecasted demand and updating at the buyer computer the forecasted demand." Applicants respectfully disagree.

Barber merely discloses idle machines on a factory floor being used to complete jobs earlier than needed and manually changing customer orders that have been entered into a factory control system used to schedule events on the factory floor. Nowhere does *Barber* disclose, teach, or even suggest *communicating from the buyer computer to a seller*

concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort made to terminate its prosecution. In order to accomplish this result, the application is to be considered "special" by the examiner.

M.P.E.P. ch. 707.02 (Rev. 1, Feb. 2003).

computer an offer to enter into an option contract for the supply of a product and subsequently *executing the option contract*, as recited in independent Claims 1 and 19, as amended. Accordingly, *Barber* fails to make up for these acknowledged deficiencies of *Aljian*.

Roden merely discloses a supplier modifying a forecast of demand based on a quantity of items dispensed to consumers by a company (other than the supplier) and the frequency at which those items were dispensed. Nowhere does *Roden* disclose, teach, or even suggest, as recited in independent Claims 1 and 19, as amended:

- *receiving at the buyer computer an indication of current buyer demand for the product;*
- *determining whether the indicated current buyer demand exceeds a maximum option quantity specified in the option contract; and*
- *if the indicated current buyer demand does not exceed the maximum option quantity specified in the option contract, communicating from the buyer computer to the seller computer a request to exercise at least a portion of the option based at least in part on the indicated current buyer demand.*

Accordingly, *Roden* fails to make up for these acknowledged deficiencies of *Aljian*.

For at least these reasons, even assuming for the sake of argument that these references could be combined in some manner, independent Claims 1 and 19 are clearly allowable over the proposed *Aljian-Barber-Roden* combination. Applicant respectfully requests allowance of amended independent Claims 1 and 19 and all their dependent claims.

Independent Claims 12 and 28

With respect to independent Claim 12, the Examiner asserts that *Barber* “discloses exercis[ing] the option with the buyer’s updated forecasted demand for the product; and enforcing the terms of the option contract at the seller computer without user input.” With respect to independent Claim 28, to make up for various noted deficiencies of *Aljian*, the Examiner asserts that *Barber* discloses “an execution module operable to execute the option contract and to store the terms of the option contract in a memory accessible to the seller

computer; and a tracking module operable to receive a request from the buyer computer to exercise the option, to access the memory to determine the terms of the option contract, and to determine whether to grant the request to exercise the option.”

As discussed above, *Barber* merely discloses idle machines on a factory floor being used to complete jobs earlier than needed and manually changing customer orders that have been entered into a factory control system used to schedule events on the factory floor. *Barber* nowhere discloses the above limitations. In addition, *Barber* also fails to disclose, teach, or suggest, as recited in independent Claims 12 and 28, as amended:

- *receiving, at the seller computer and from the buyer computer, a request to exercise at least a portion of an option;*
- *at the seller computer, in response to receiving the request:*
 - *accessing the stored terms of the option contract; and*
 - *using the stored terms of the option contract:*
 - *determining whether an option period specified in the option contract has begun;*
 - *if the option period has not yet begun, notifying the buyer computer that the request is premature; and*
 - *if the option period has begun:*
 - *determining whether the request specifies a request quantity that exceeds a maximum option quantity specified in the option contract;*
 - *if the request quantity exceeds the maximum option quantity, notifying the buyer computer that the request is improper; and*
 - *if the request quantity does not exceed the maximum option quantity, storing the request for seller compliance.*

Accordingly, *Barber* fails to make up for these acknowledged deficiencies of *Aljian*.

For at least these reasons, amended independent Claims 12 and 28 are allowable over the proposed *Aljian-Barber-Roden* combination. Applicant respectfully requests allowance of amended independent Claims 12 and 28 and all their dependent claims.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case, the Examiner is invited to call Christopher W. Kennerly, attorney for Applicant, at 214.953.6812.

A check in the amount of \$110.00 is attached for a one-month extension of time and a check in the amount of \$36.00 for the addition of two claims total over twenty. The Commissioner is also hereby authorized to charge any other fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
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Date: July 22, 2003

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